

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:08CV152-03-MU

JAMES E. WHALEY,)
)
 Plaintiff,)
)
 v.)
)
 MICHAEL H. GRIFFIN, Attorney,)
)
 Defendant.)
 _____)

ORDER

THIS MATTER comes before the Court on initial review of Plaintiff's Complaint under 42 U.S.C. § 1983¹, filed April 14, 2008. (Document No. 1.) Upon careful consideration by the Court, for the reasons set forth herein, the Plaintiff's Complaint will be dismissed.

Plaintiff Complaint, filed as a § 1983 claim, essentially contains a list of grievances he has with his criminal defense attorney, Mr. Michael Griffin. Plaintiff claims that Mr. Griffin has "caus[ed] [him] mental and emotional pain and stress" by refusing to answer his calls letters and not coming to see him. (Complaint at 3.) By way of relief, Plaintiff asks that his attorney be removed from his case, that he be disbarred and that he pay Plaintiff \$40,000 in damages. (Id.)

A case filed under 42 U.S.C. § 1983 requires a deprivation of a right secured by the Constitution by a person acting under color of state law. Defense attorneys, whether privately retained or publically appointed, is not amendable to suit under § 1983. Hall v. Quillen, 631 F.2d

¹ This is Plaintiff's second § 1983 action filed in this Court. Plaintiff filed his first on February 13, 2006 which was dismissed by this Court on February 24, 2006. See 1:06cv38. In that case, Plaintiff named the North Carolina Court system, District Attorney Chris Hess, Public Defender Calvin Hill and two Asheville Police Officers.

1154 (4th Cir. 1980) (affirming dismissal of 42 U.S.C. § 1983 action against court-appointed attorney as lacking “state action” and therefore failing to state a claim); and Deas v. Potts, 547 F.2d 800 (4th Cir. 1976) (affirming dismissal of 42 U.S.C. § 1983 action against retained counsel); Polk County v. Dodson, 454 U.S. 312, 324-25 (1981) (public defender). Thus, Plaintiff’s Complaint cannot be maintained against Plaintiff’s counsel, Mr. Griffin.

Based upon the foregoing, the instant Complaint is hereby **DISMISSED** for failure to state a claim upon which relief can be granted.

SO ORDERED.

Signed: April 15, 2008

A handwritten signature in cursive script, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

